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NICK ROSSI, STAFF DIRECTOR  
KIM LIPSKY, DEMOCRATIC STAFF DIRECTOR

## United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <http://commerce.senate.gov>

585

July 24, 2018

The Honorable Ajit V. Pai  
Chairman  
Federal Communications Commission  
445 12th Street Northwest  
Washington, D.C. 20554

Dear Chairman Pai:

We write to you in support of the Federal Communication Commission's (FCC) recent efforts to crack down on abusive and illegal robocalls, and we applaud the enforcement actions taken by the FCC to protect consumers. Additionally, we appreciate the FCC's recent move, following the D.C. Circuit ruling that overturned portions of a past overly broad FCC interpretation, to seek feedback on key outstanding Telephone Consumer Protection Act (TCPA) issues.

The FCC's past interpretations of the TCPA have resulted in uncertainty about how those calling in good faith can comply with FCC regulations, making it more difficult for consumers to receive communications they want and need. This chills legitimate communications and leads to increasing class action litigation that often does little to help consumers. The FCC must make it more workable for legitimate businesses to stay in communication with consumers in a timely and effective manner, while continuing its fight to eliminate annoying, illegal, and fraudulent calls and texts.

The D.C. Circuit's recent opinion in *ACA International v. FCC* set aside the FCC's overly broad interpretation of what devices qualify as an automatic telephone dialing system (ATDS). The opinion also set aside the FCC's 2015 approach to the problem of reassigned numbers, including a presumption that a caller will know a number is reassigned after one attempted call, even if that attempted call is not answered.

We urge the FCC to take quick action to clarify important issues under the TCPA. It is imperative that the FCC develop an updated TCPA framework that both protects consumers and provides those calling in good faith with a reasonable means of communicating with their customers. Such an approach should be consistent with Congressional direction in the 1991

TCPA and should reflect innovative technologies that are emerging to help consumers manage calls. Congress passed the TCPA to, among other things, protect the privacy of cell phone users at a time when wireless technology was in its infancy, to protect emergency and public safety-related phone lines from being tied up by autodialed calls, and to control the shifting of telemarketers' advertising costs to consumers by the use of random and sequential number generators to run mass calling campaigns. Congress did not intend for the TCPA to be a "barrier to the normal, expected or desired communications between businesses and their customers."

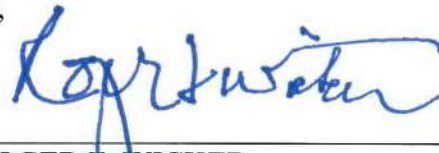
Consistent with Congress' intent and the text of the TCPA, the FCC should further confirm that, to be an ATDS, equipment must use a random or sequential number generator to store or produce numbers and dial those numbers without human intervention, and find that only calls made using actual, not theoretical, ATDS capabilities are subject to the TCPA's restrictions.

As the FCC has reported, unwanted robocalls are consistently a top consumer complaint to the agency. We share the frustration of our constituents with the persistence of unlawful robocalls. Clear rules will allow the FCC to punish illegal actors, while permitting those calling in good faith to understand what they must do to remain in compliance; these are both positive outcomes for consumers.

Sincerely,



JOHN THUNE  
Chairman




ROGER F. WICKER  
United States Senator



ROY BLUNT  
United States Senator



DEB FISCHER  
United States Senator



JERRY MORAN  
United States Senator



JAMES M. INHOFE  
United States Senator



SHELLEY MOORE CAPITO  
United States Senator





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Deb Fischer  
United States Senate  
454 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Fischer:

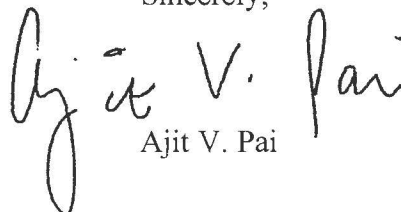
Thank you for your letter in support of the FCC's recent efforts to crack down on abusive and illegal robocalls. Unwanted robocalls are consumers' top complaint to the FCC, and we have accordingly made combating illegal robocalls our top consumer protection priority. We have aggressively enforced the Telephone Consumer Protection Act as well as the Truth in Caller ID Act—leveling over \$200 million in proposed fines against illegal robocallers. We have authorized carriers to stop certain robocalls at the source while we pursue creation of a reassigned numbers database and a robust call-authentication framework. And we have been working with our colleagues at the Federal Trade Commission as well, hosting a policy forum in March and a tech expo in April.

In your letter, you urge the Commission to take quick action to clarify important issues under the TCPA. I agree that, in light of the decision of the U.S. Court of Appeals for the District of Columbia in *ACA International v. FCC*—which struck down much of the agency's 2015 *TCPA Declaratory Ruling and Order*—it is time for the Commission to establish robust consumer protections in line with federal law. As I predicted in my dissent, the last Administration's order has left both the American customer and American enterprise worse off. This cannot possibly be what Congress intended.

The Commission is now poised to examine and reconsider these issues. On May 14, 2018, the Commission sought comment on the definition of an "automatic telephone dialing system," the treatment of calls to reassigned wireless numbers, and the scope of a consumer's right to revoke prior express consent to receive robocalls. We also sought renewed comment on reconsidering the *Broadnet* decision and the 2016 *Federal Debt Collection Rules*, as well as the interplay between the *Broadnet* decision and the Budget Act amendments. The comment and reply period closed on June 28, 2018, and Commission staff is now reviewing the record. We will be sure to include your comments in the record of the proceeding and take them into account as we move forward.

I look forward to working with my colleagues on addressing these issues while continuing our many other efforts to combat illegal robocalls. Please let me know if I can be of any further assistance.

Sincerely,

  
Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable James M. Inhofe  
United States Senate  
205 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Inhofe:

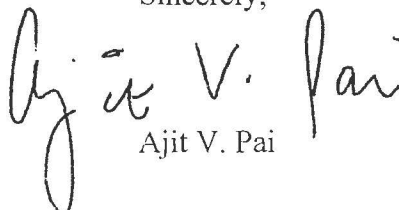
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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Jerry Moran  
United States Senate  
521 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Moran:

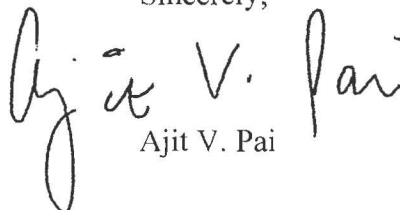
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Sincerely,

  
Ajit V. Pai





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable John Thune  
Chairman  
Committee on Commerce, Science, and Transportation  
United States Senate  
512 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Thune:

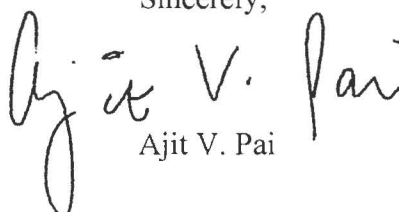
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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Roger Wicker  
United States Senate  
555 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Wicker:

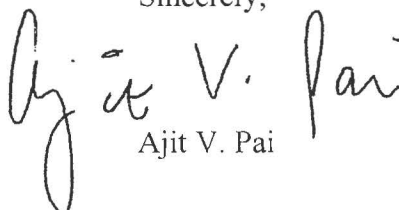
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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Roy Blunt  
United States Senate  
260 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Blunt:

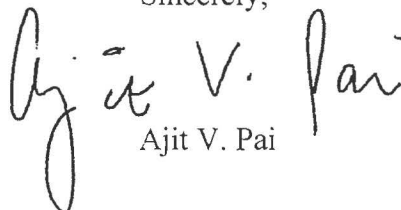
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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 7, 2018

The Honorable Shelley Moore Capito  
United States Senate  
172 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Capito:

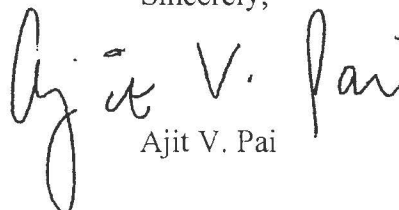
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